FOR THE DEFENSE

The Newsletter for the
Maricopa County Public Defender's Office

Volume 1, Issue 2 -- May, 1991

Dean W. Trebesch,
Maricopa County Public Defender

Contents:

Program Enhances Quality of Representation

by Diane J. Terribile

Looking for help on sentencing issues?? Well, you may find it soon enough . . . The Maricopa County Public Defender's Office is about to launch a long-awaited Client Services Program. The goal of the program is to enhance the quality of representation provided to Public Defender clients.

On May 28th, four Client Service Coordinators begin employment with the Public Defender's office. Their program is one of several defense-based alternative sentencing programs available throughout the country. It is designed to help find and promote incarceration alternatives for offenders who are genuinely motivated toward rehabilitation and change. Client Service Coordinators assist attorneys seeking sentencing options by finding and proposing innovative, individually designed, non-incarcerative sanctions for clients facing jail and prison sentences.

Client Service Coordinators are non-lawyers with social or behavioral science degrees and caseload management experience. They are chosen for their ability to observe and accurately assess human character. Those selected for the position are highly motivated, hard working and committed to the rehabilitation of the offender. They will surely be an asset to the office and we enthusiastically welcome them aboard.

The Coordinators will begin accepting referrals from attorneys following a training and orientation program which is expected to last four to six weeks. They will be introduced to each trial group at the June trial group meetings. Additional information will be provided to all staff members before the program is initiated. If you have any specific questions, feel free to stop by my office.

Dismissal for Prosecutorial Misconduct Granted

On April 22, 1991, Judge Peter T. D'Angelo dismissed State v. Gloria Williams with prejudice following a hearing on Public Defender Bill Foreman's motion to dismiss the case for prosecutorial misconduct.

Foreman's client was charged with one count of Aggravated Assault, a Class 3 dangerous offense. Defendant's car was repossessed, an altercation ensued and the manager of Crazy Horse Used Cars was shot in the abdomen with the defendant's pistol. During cross-examination of the defendant, Deputy County Attorney Stephen Smith asked the defendant if the pistol had been concealed in her purse and then asked her, "Are you aware that it's illegal to carry a concealed weapon in Arizona?" Defendant's counsel objected on the basis that the question called for a legal conclusion on the part of the witness, and the objection was sustained. Counsel then moved for a mistrial on the basis that the defendant was not charged with misconduct involving weapons and that the State only asked the question as "a backhanded way of accusing her of yet another crime in the presence of this jury". The defendant's Motion for Mistrial was granted.

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Subsequent to dismissal of the jury, the prosecutor told defense counsel, "You've made a big mistake, you were winning the case, now I know all your defenses." A Motion to Dismiss for Prosecutorial Misconduct was filed on behalf of the defendant which included an affidavit as to the prosecutor's post-trial statement. The motion alleged that the State intentionally mistried the case and cited Pool v. Superior Court, 139 Ariz. 98 677 P.2d 261 (1984). Pool holds that retrial is barred on double jeopardy grounds when the intentional conduct of the prosecutor is not merely the result of legal error, negligence, mistake or insignificant impropriety.

Following arguments, defendant's Motion to Dismiss for Prosecutorial Misconduct was granted. Dismissal with prejudice.

SIDE BAR:

The general rule is that a retrial of a defendant is not prohibited when a mistrial is granted on the defendant's own motion. In those circumstances, the defendant's motion for a mistrial is considered consent to the new trial. Case law is slightly different when the mistrial is by the court's own motion or by the prosecutor over counsel's objection.

An exception that has been carved out in the latter situation is when actions by the court or prosecutor cause the defendant to move for a mistrial. In this situation, the trial lawyer may raise the defense of double jeopardy.

In Pool v. Superior Court, 139 Ariz. 98, 677, P.2d 261 (1984), the Arizona Supreme Court considered the type of prosecutorial misconduct that may bar a retrial. The Pool case is essential to know as part of Arizona criminal defense work because it rejects the federal standard of prosecutorial misconduct that is based on intentional conduct. The Arizona standard, according to Pool, is that retrial is barred when the prosecutor intends to provoke the defendant's mistrial motion or when the prosecutor knowingly engages in misconduct for any improper purpose and is indifferent to the danger of a mistrial.

FOR THE DEFENSE

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FOR THE DEFENSE is the monthly training newsletter published by the Maricopa County Public Defender's Office, Dean W. Trebesch, Public Defender. **FOR THE DEFENSE** is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 15th of each month.

Special Action Stays Must Be Sought In Trial Courts

Before a stay request in a petition for special action will be granted by Division One of the Arizona Court of Appeals, the trial lawyer must have requested and been denied a stay with the trial court. Petitioners should therefore first request a stay from the superior court before proceeding with a special action. Failure to do so may prevent a Court of Appeals stay from being issued.

Further, the clerk of the Court of Appeals has issued a memorandum stating that stay requests in petitions for special actions will not be heard unless the attorney affirmatively seeks a hearing for the stay. When your petition is filed, the clerk's office will identify one of the judges from the panel to which the petition has been assigned. A telephone conference can then be arranged along with the prosecutor to hear the stay issue. It is best to try to get the prosecutor to agree to the stay before the hearing. In any event, the party seeking the stay must coordinate the telephonic conference.

Supreme Court Modifies 104 Committee Report

by Christopher Johns

In May, the Arizona Supreme Court received recommendations from the Proposition 104 Implementation Committee (Victims' Bill of Rights) and immediately circulated its modifications to the report. The Implementation Committee's report was final on April 11th. The modified rules will be circulated for comment before final adoption by the Court. They are being considered on an emergency basis. If adopted, several of the modifications will alter the way criminal defense lawyers practice. It is unclear at this point what effect any legislative enactment will have, if any, on the Court rules. The modifications are as follows:

* **Rule 9.3.** The Court deleted the provision allowing trial courts to direct the order of testimony if the victim desires to be present. The Court's reasoning for not including the provision is that it is not contained in the Victims' Bill of Rights, could detract from victims' rights and treats victims differently from other witnesses. Moreover, the trial judge still maintains control over the order of witnesses and can address the issue in specific cases.

* **Rule 26.12.** The Court adopted the Implementation Committee's proposed modifications to Rule 26.12 without the requirement that clerks of the superior court make payments of restitution to victims at least monthly and that the clerks "promptly" notify the victim of any delinquency. The Supreme Court indicated that before imposing additional burdens on the clerks of the superior court, it should receive comment from them and other affected governmental agencies as to how best to implement a policy requiring periodic payments and notification.

* **Rule 39(b)(10).** The Court deleted the proposal of the Implementation Committee prohibiting comment on the victim's refusal to be interviewed or deposed. The Supreme Court, in declining to adopt the Implementation Committee's recommendation, indicated that this proposal did not deal with victims' rights but with evidentiary and procedural issues.

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* **Rule 39(c).** The Supreme Court decided not to adopt, at least not at this time, an "opt out" system, because of its potential burden on the state budget. The Court indicated that while it is aware of the Implementation Committee's view that requiring an affirmative request from all victims might result in the practical non-effectuation of the constitutional right to notice for many victims who are members of minority groups or economically disadvantaged. Before adopting an "opt out" system, the Court would like comment from minority groups and governmental agencies on how an "opt out" system can be funded.

* **Rule 39(e).** The Supreme Court declined to adopt the Implementation Committee's addition of this new subsection requiring the trial court to inquire, prior to any proceeding, whether the victim has been notified as required by Rule 39(c). The Court expressed concern as to the impact on speedy trial rights and wishes to obtain comments from defense attorneys, prosecutors and judges before implementing such a rule.

* **Rule 31(a)(4).** The Court also declined to adopt the recommendation allowing a victim's assistance worker employed by prosecutors to represent victims in any proceeding involving or resulting from a criminal prosecution for the purpose of assisting victims in exercising their new constitutional rights. The Supreme Court indicated the concern that as currently written the recommendation grants privileges and responsibilities to victim assistance representatives "inherent in the practice of law". The Court noted that there is nothing in the present rules prohibiting victims' assistance personnel from offering advice, counseling and assistance to victims.

If you would like to obtain a copy of the Supreme Court's modifications or more information, you can contact the Court at 542-9396. Comments about the proposed rules can be filed with the Clerk of the Supreme Court, 1501 West Washington Street, Suite 402, Phoenix, Arizona 85007, in an envelope marked "Rule Comment".

At the time this update was written, action by the full Arizona Senate had not been taken on House Bill 2412 (the Victims' Rights Act). A vote must be taken by the full Senate and undoubtedly more amendments will be made at that time. Differences in the House and Senate versions of the bill will be worked out in a conference committee at the close of the legislative session and sent to the Governor for his signature. Any bill passed will probably have an emergency clause and we should be able to know what the new legislative provisions will be by our next newsletter issue. ^

FROM JUVENILE

by Richard A. Rice

During the last few months several of the attorneys assigned to our juvenile division have been busy in the appellate courts. **Susan Bliss** appeared in the Court of Appeals early in May on a juvenile restitution issue concerning A.R.S. 8-241. She argued the mere judicial finding that "a 14 year old in good health should be able to earn at least $20 a month" was an insufficient inquiry into the juvenile's earning capacity under A.R.S. 8-241(c) and such analysis did not further the rehabilitative purpose of juvenile court.

Prior to assessing restitution against a juvenile, the judge must determine the juvenile's earning capacity in light of his/her age, physical and mental condition. However, juvenile commissioners/judges routinely ignore the statute and follow the probation officers stock recommendation of "no restitution be assessed unless the victim appears in court". This recommendation erroneously shifts the focus from rehabilitation of the juvenile to repayment of the victim. In the case appealed, the commissioner awarded full restitution of $631 against a 14-year-old 8th grader who was enrolled in a special school for students with behavioral problems, who had no prior employment. The parents wished the child to concentrate on schooling.

David Katz and Ellen Katz were involved in the following cases:

State v. Wilson -- The county attorney appealed a dismissal with prejudice of child molestation charges unless refiled within 60 days. The Court of Appeals, in a unanimous decision, dismissed the county attorney's appeal as moot.

Barbara Cerepanya, David Katz and Ellen Katz took the following case to the United States Supreme Court:

State v. Sutton -- In a case challenging the power of the court to set a juvenile case for trial although no probable cause was found at an earlier hearing, the United States Supreme Court denied Certiorari.

David Katz handled:

State v. Thompson -- After receiving a split decision in the Court of Appeals on whether Hinson applies to juveniles, the matter currently is on a Petition for Review to the Arizona Supreme Court.

State v. Johnston -- In a case claiming indigence as a defense to a charge of violation of probation for non-payment of restitution, the United States Supreme Court denied Certiorari.

Additionally, congratulations are in order for: **Anne Aberbach**, who was appointed by the Governor to the Juvenile Governor's Advisory Council for Juvenile Justice and Delinquency Prevention and Barbara Cerepanya who was appointed by the Governor to the Governor's Task Force on Juvenile Corrections. ^

EDITOR'S NOTE:

Richard A. Rice was appointed by the Supreme Court to the Arizona Juvenile Detention Standard Advisory Committee.

The Importance of Representation at Sentencing

by Christopher Johns

Some judges on the criminal bench have recently expressed concern that our clients are being abandoned at sentencing. They perceive that defense attorneys are failing to prepare clients for interviews with the presentence writer, not contacting presentence writers to make comments about clients, neglecting to provide copies of or review the presentence reports with clients, and being unprepared for allocution.

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While there are many different opinions about effective advocacy at sentencing, there is agreement that it is extremely important, given such factors as mandatory sentencing. Moreover, standards on ineffectiveness of counsel at sentencing are changing, requiring more diligence of counsel in order to satisfy the constitutional rights of clients at the sentencing phase of representation. Whether the judges' concerns are accurate is unclear; however, what is unquestionable is that our clients need us more than ever during the sentencing phase of our representation. As the American Bar Association Standards Relating to Sentencing Alternatives and Procedures provides: "[I]t should be recognized by the lawyer that for many convicted defendants, the sentence will be the most important and the only really difficult issue in the case.".

At a bare minimum, "[D]efense counsel is under a duty to be familiar with the sentencing alternatives available to the court, to be certain that the court is aware of such alternatives, to explain fully to his client the consequences of the various dispositions available and to be certain that the sentence is based on complete and accurate information.". People v. Cooper, 89 Cal.App.3d 716, 152 Cal. Rptr. 555 (1979, 2d Dist.) (reversing a defendant's sentence on ineffectiveness of counsel who merely agreed with the court's presentence report and thus according to the appellate court, "in effect argued against his client . . ."). See, also, D. Golden, Let Defense Counsel Beware: The Illusory Effect of Plea Agreements to "Waive Allocution", 28 Howard Law Journal, 273-91 (1985).

Of crucial importance is challenging any inaccurate information in the presentence investigation (PSI). See, Townsend v. Burke, 334 U.S. 736 (1948). Generally, absent an objection, the defendant waives this issue. Likewise, with restitution. Courts have also suggested that at a minimum, it is defense counsel's duty to his client to obtain the PSI sufficiently in advance to share it with the client and to contest any aggravating factors forming the basis for sentencing.

Other considerations include:

* That in obtaining a favorable plea and at sentencing, a prior and thorough investigation into the client's background and life history may be of immeasurable importance.

* Being aware that although certain charges have been dropped during plea negotiations, they will not be forgotten for purposes of sentencing.

* In collecting sentencing information for the client, counsel should dispatch a formal request to the prosecutor inquiring whether the prosecutor's office has any mitigating evidence. See, Rule 26.8(b), ARCP ("[T]he prosecutor shall disclose any information in his possession or control, not already disclosed, which would tend to reduce the punishment imposed.").

* Defense counsel should, according to criminal justice commentators, contact the agency preparing the PSI and ascertain which officer will be assigned to the client's case. One defense commentator expressed it as follows:

"Since the probation officer's report is such an important factor in the determination of the sentence by the judge, the competent defense attorney will make certain that the officer is aware of every scrap of information favorable to the defendant. Certain information is not sought by overworked probation officers, but if it is available to the officer, it may be included in the report. Character references from clergymen and other respected members of the community may be sought by diligent counsel . . . in addition, witnesses to the incident, unknown to the police or the probation officer, may be produced for the purpose of showing that the defendant played a minor part in the commission of the crime."

* Submitting a sentencing memorandum when appropriate to correct inaccurate information and to give the court guidance at sentencing.

* Being completely prepared for allocution (at least one case has found that a "stand in" unfamiliar with the PSI and facts and circumstances of the case is ineffective assistance).

* Preparing the client for sentencing. Even an inarticulate client can make a difference if he can sincerely say "I'm sorry".

NOTE:

On the subject of sentencing, Ed McGee has brought to my attention that an amendment to A.R.S. 41-1604.06, effective September 27, 1990, bars all dangerous and repetitive offenders from receiving earned release credits. Dangerous and repetitive offenders (even on class 4, 5 and 6 offenses) must now either parole or serve their sentences "flat". Care should be taken in how you advise clients on what amount of prison time they will serve in the above situations. If you need further information, you may want to contact the Department of Corrections Time Computation Unit.

TRAINING CALENDAR

May 31

"Experts on Experts" sponsored by State Bar at the Phoenix Mountain Preserve from 9:00 a.m. to 4:30 p.m.

June 2-4

"Enforcing Our Bill of Rights" sponsored by the Kentucky Department of Advocacy -- Annual Public Defender Conference, Covington, Kentucky

June 7

"1991 Ethics Seminar: What You Should Know" sponsored by the Maricopa County Public Defender's Office at the Downtown Sheraton Hotel from 1:30 p.m. to 4:00 p.m.

June 15-16

National Defender Investigators Association Training in San Diego, California

June 16-29

National Criminal Defense College Trial Practice Institute, Macon, Georgia (cont. on pg. 5)

July 7-14

Western Trial Advocacy Institute, Laramie, Wyoming

July 14-27

National Criminal Defense College Trial Practice Institute,Macon, Georgia

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State v. Morgan
83 Ariz. Adv. Rptr. 3, March 26, 1991 (Court of Appeals)

Defendant was found guilty of failure to return rental equipment. On appeal, he claimed that the crime required proof that he knew his omission was a crime, not merely that he knew he had failed to return equipment he was obligated to return. A.R.S. 13-1806(A) makes it a crime to knowingly fail to return rented property. A.R.S. 13-105(6)(b) provides that "knowingly" does not require any knowledge of the unlawfulness of the act or omission. While knowledge of a statutory duty must be established in rare circumstances [such as State v. Garcia, 156 Ariz. 381, regarding failure to register as a sex offender], here the duty did not arise only from a statute but also from the rental relationship. The circumstances here were sufficient to alert the defendant of the consequences of his failure to return the rented property.

State v. Malone
83 Ariz. Adv. Rptr. 4, March 28, 1991 (Div. 1)

Defendant was convicted of armed robbery and kidnapping, both dangerous crimes. As an aggravating factor at sentencing, the trial court considered appellant's use of a deadly weapon. The majority of the court finds it is not double punishment to use the same weapon as an element of the offense, to support an allegation of dangerousness and as an aggravating factor. The court finds State v. Bly, 127 Ariz. 370, 621 P.2d, 279 (1980) dispositive (though without any great enthusiasm). In dissent, Judge Gerber argues that Bly has been superseded by later cases and that this situation violates double punishment.

State v. Anderson
83 Ariz. Adv. Rptr. 22, April 2, 1991 (Div. 1)

At sentencing, the defendant is sentenced to prison and ordered to pay a fine. The trial judge did not order the felony penalty assessment of A.R.S. 13-812 or the $8.00 time payment fee of A.R.S. 12-116. The trial judge later issued a minute entry adding those payments. As the $100.00 felony assessment was not done in the presence of the defendant, as required by Rule 26.9, the assessment is invalid and stricken. However, the time payment fee is not part of the sentence but is an administrative fee. While the better practice would be to impose the fee in the presence of the defendant, Rule 26 does not require it.

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State v. Swensrud
84 Ariz. Adv. Rptr. 19, April 9, 1991 (S.Ct.)

Defendant was arrested for DUI on January 25. The last day for trial under Hinson was June 24. On June 7, a pretrial conference was scheduled but was continued until June 28 at defense counsel's request. In October, defendant moved to dismiss under Hinson and the motion is granted. The state appeals on the grounds that the time from June 7 to June 28 is excludable time. The Arizona Supreme Court does not address whether that time is excludable, finding that a defendant must object before the 150-day period expires in order to avoid a waiver of the Rule 8 violation. A defendant cannot wait until after the 150-day period has expired nd then claim a Rule 8 violation after it is too late for the trial court to prevent the violation. In a footnote, the court suggests that the objection must come a reasonable period of time before the 150-day period expires and what is reasonable will depend upon the circumstances of the case. [Note: Two justices concur only in the result.]

State v. Takacs
84 Ariz. Adv. Rptr. 30, April 11, 1991 (Div. 1)

Defendant, a bar owner and casino operator, claims that the gambling laws [A.R.S. 13-3301 et seq.] are unconstitutional because the statutes that define the amusements and the social gambling exceptions are vague. The court holds that persons of ordinary intelligence would understand the meaning of the challenged phrases "control to any material degree", "conducted as a business", and "compete on equal terms". The gambling statute is not unconstitutionally vague. The defendant's arguments that the statutes were unconstitutionally broad and that they violated the First Amendments were not presented to the trial court and were waived on appeal.

State v. Soule
84 Ariz. Adv. Rptr. 11, March 21, 1991 (S.Ct.)

Defendant, accused of selling heroin, sought to defend on the basis of entrapment without admitting the elements of the offense. The Arizona Supreme Court declines to follow Matthews v. United States, 485 U.S. 58 (1988) and holds that a defendant must admit all the elements of an offense to avail himself of the entrapment defense. Permitting inconsistent defenses fosters perjury and confuses the jury. Justices Feldman and Gordon dissent, noting that Arizona is the only jurisdiction requiring admission of all elements as part of an entrapment defense.

State v. Mojarro
84 Ariz. Adv. Rptr. 43, April 16, 1991 (Div. 2)

During a homicide investigation, police learn that the defendant has useful information. The defendant refused to testify and the trial judge found him in criminal contempt.

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Defendant was sentenced to a six-month jail term. Defendant was then charged with hindering prosecution. Defendant moves to dismiss the hindering prosecution charges as violating double jeopardy. The double jeopardy clause bars any subsequent prosecution in which the government to establish an essential element to the offense charged in that prosecution, will prove conduct that constitutes an offense for which the defendant has already been prosecuted. Grady v. Corbin, 110 S.Ct. 2084 (1990). The criminal contempt citation and punishment was a prosecution for purposes of the double jeopardy clause. The double jeopardy clause clearly prohibits a second proceeding to punish for the same conduct.

State v. Dockery
84 Ariz. Adv. Rptr. 24, April 9, 1991 (Div. 1)

Defendant pleads guilty and receives a stipulated sentence of 7.5 years. Defendant later finds that he is HIV positive after acceptance of his plea but before sentencing. Defendant moves to withdraw from his guilty plea. The trial judge denies his request even though it is accepted that the defendant's life expectancy is now between five and eight years. The trial judge abused his discretion. Rule 17.5 allows withdrawal of a guilty plea when necessary to correct a manifest injustice. In dissent, Judge Gerber argues that a fatal illness does not create a manifest injustice and that the new evidence really goes to mitigated punishment, not a lack of guilt.

State v. Vasquez
84 Ariz. Adv. Rptr. 3, February 12, 1991 (S.Ct.)

Police answered a domestic disturbance call and found defendant and his wife arguing in a parking lot. The police separated the couple and decided to drive the defendant home. The defendant said he was cold and an officer pointed at a jacket in the car. Defendant replied that it was his jacket and that he wanted it. The police officer advised the defendant he would first have to search the jacket. Defendant did not object. While patting down the jacket, the officer could not tell if it contained any weapons and reached into the pockets. The officer found drugs. The warrantless search was permissible as a protective search for weapons incident to a valid investigatory stop. The officer was reasonable and prudent in searching the jacket pockets for weapons before giving it to the defendant. Reaching into the jacket pocket was the only reasonable course of action for the police officer to follow. In dissent, Justice Feldman argues that the record does not support the conclusion that the officer's pat down was for his protection.

State v. Williams
84 Ariz. Adv. Rptr. 38, April 11, 1991 (Div. 2)

The defendant is arrested after his escape from prison. During questioning, the defendant first declines to answer questions. When asked again, he responds that he might answer some questions but not everything. At the suppression hearing, the interrogating officer testifies that he did not hear the appellant's first answer declining to answer questions. While interrogation must cease if a defendant wishes to remain silent, the police are entitled to ask further questions if the individual's answer is ambiguous. As to honoring the defendant's right to decline to answer on certain subjects, the defendant's refusal was honored by the police officers. The police moved on to another question whenever the defendant refused to answer a particular question. The admission of the confession was also harmless error because his voluntary statements were admissible to impeach his trial testimony that he did not remember the events.

Defendant raised an insanity defense at trial and the prosecutor argued, "Defendant has been sitting here crying for three days now. Strategically, I might note". Defense counsel's objection was sustained but his motion for a new trial was denied. To be entitled to a new trial, the defendant must show both prosecutorial misconduct and prejudice. There was overwhelming evidence against the appellant and the remark was harmless error.

During trial, one of the jurors went to the County Attorney's Office to request assistance in a child custody matter. The juror spoke to a county attorney in the civil division. The prosecutor informed the court of the situation. No motion for mistrial was made. Defendant brought a motion for new trial based upon this incident and allegations that the victim's husband spoke to jurors. Improper juror communications are not grounds for a new trial unless the misconduct was prejudicial. The first instances showed no impropriety and the second instances was based upon unsubstantiated allegations.

Defendant's potential punishment was enhanced with Hannah priors. Defendant claims that Hannah priors should not apply because all of the crimes were committed as part of an escape spree and are therefore the same occasion under A.R.S. 13-604(h). When different crimes are committed at the same place on the same victim and at the same time or as part of a continuous series of criminal acts, they should be considered as having been committed on the same occasion. State v. Shulark, 162 Ariz. 482. While all these crimes were completed in five hours, they were separate acts against different victims at different places and at different times. Simply because crimes follow one another does not make them a spree.

State v. Iniguez
84 Ariz. Adv. Rptr. 26, April 11, 1991 (Div. 1)

Defendant pleaded no contest to aggravated assault and was ordered to pay restitution in an amount not to exceed $200,000.00. In a separate civil action, Iniguez and his insurance company paid $150,000.00 to the victims for a release of all claims. The release also stated that another insurance policy with a $50,000.00 liability limit would be litigated in a declaratory judgement action. If defendant won that claim, the $50,000.00 would be paid to the victim. If he lost, the defendant would bear no further liability. After the civil settlement, the judge conducted a restitution hearing. The only evidence of damage was $120,000.00 in medical bills. The superior court judge ordered defendant to pay restitution of $50,000.00. (cont. on pg. 7)

An order of restitution does not preclude a victim from bringing a separate civil action and proving damages in excess of the restitution order. A.R.S. 13-807. While settlement does not bar any restitution order, victims are not entitled to collect anything beyond full compensation for their economic loss. While the court must consider all economic losses of the victim and must require the offender to make restitution in the full amount of economic losses, it should not order restitution exceeding the victim's actual economic losses after crediting payments received by the victim outside the criminal proceedings. Because the record does not support a finding that the economic loss was $200,000.00 or more, the matter is remanded for an evidentiary hearing. In a special concurrence Judge Taylor questions the authority of the prosecution to enter into a plea agreement setting a limit on the amount of restitution to be paid. The economic rights of the victim may not become a bargaining chip in plea negotiations.

Arizona Advanced Reporter case summaries are written by Robert W. Doyle and prepared for use by Maricopa County Public Defenders.

APRIL JURY TRIALS

March 25

Jeffrey E. Fisher: Client charged with aggravated assault (dangerous) and burglary. Trial before Judge Dougherty ended April 25. Defendant found not guilty of aggravated assault and guilty of burglary. Hung jury on the priors. Prosecutor was L. Ruiz.

March 28

Larry Grant: Client charged with one count of fraudulent schemes and artifices, one count of obtaining property by false pretenses, one count of conducting criminal enterprise and one count of theft. Trial before Judge Dann ended April 29. Defendant found not guilty of fraudulent schemes and obtaining property by false pretenses. Defendant found guilty of conducting criminal enterprise and theft. Prosecutor was S. Stephens of the A.G.'s office.

April 01

Christopher W. Howard: Client charged with aggravated assault, resisting arrest and misdemeanor assault. Trial before Judge Sheldon ended April 03. Defendant found not guilty of all charges. Prosecutor was M. Carbone.

April 02

Michael J. Smith: Client charged with fraudulent schemes and burglary. Trial before Judge Hertzberg ended April 05. Court entered judgement of acquittal on fraudulent schemes. Defendant found guilty of burglary. Prosecutor was T. Glow.

April 04

J. Paul Ivy: Client charged with DUI. Defendant found not guilty of DUI and guilty of suspended license.

Philip S. Vavalides and Brian R. Salata: Client charged with fraudulent schemes and theft. Trial before Commissioner Ellis ended April 11. Court entered judgement of acquittal on fraudulent schemes. Defendant found guilty on theft. Prosecutor was L. Cutler.

April 06

Elizabeth S. Langford: Client charged with DUI with suspended license (felony). Trial before Judge Ryan ended April 16. Defendant found guilty of suspended license (misdemeanor). Prosecutor was J. Walker.

April 09

Dan Lowrance: Client charged with possession of narcotic drug. Trial before Judge Gottsfield ended April 16. Defendant found guilty. Prosecutor was V. Kratovil.

April 10

Andrew J. DeFusco: Client charged with aggravated DUI. Trial before Judge Hertzberg ended April 15. Defendant found guilty of charge. Prosecutor was P. Howe.

Donna L. Elm: Client charged with aggravated DUI. Trial before Judge Noyes ended April 12 with hung jury (in favor of defense, 5 to 3). Case to be retried May 28. Prosecutor was B. Baker.

April 16

Susan Corey: Client charged with two counts aggravated assault (one count dangerous) and felony flight. Trial before Judge Hertzberg ended April 25. Defendant admitted guilt to felony flight and was found not guilty of both aggravated assaults. Prosecutor was J. Fisher.

April 20

James P. Cleary: Client charged with aggravated assault (dangerous) and endangerment. Trial was set before Judge Cates. Both charges were dismissed before trial. Prosecutor was B. Baker.

(cont. on pg. 8)

April 22

Timothy J. Agan: Client charged with possession of marijuana. Trial before Judge Hendrix ended April 22. Court entered a judgement of acquittal. Prosecutor was M. Winter.

April 25

Raymond Vaca: Client charged with trafficking, burglary and theft. Trial before Judge Cole ended May 07. Defendant found guilty of trafficking and theft. Defendant found not guilty of burglary. Prosecutor was A. Massis.

Valarie P. Shears: Client charged with aggravated assault (dangerous) and criminal trespass, with a prior felony conviction alleged. Trial before Judge Martin ended April 29. Aggravated assault was reduced to disorderly conduct, a misdemeanor. Defendant found not guilty of criminal trespass. Prosecutor was B. Bainbridge.

April 30

Valarie P. Shears: Client charged with aggravated assault. Trial to the bench before Judge Ryan ended May 03. Defendant found guilty. Prosecutor was D. Flader. ^

PERSONNEL PROFILES

Elia Hubrich started employment as the 10th-floor receptionist on April 1st following a five-month period of volunteering at our office. Elia previously worked for the Maricopa Medical Center as a Patient Account Representative.

Two new Pretrial Services Officers started on April 29th:

Yolanda Carrier, who comes to the Public Defender's office from employment with Maricopa County Health Services, has an extensive employment history in the California medical community prior to moving to Phoenix. Yolanda is fluent in Spanish.

Sylvia Gomez also joins our office after employment with Maricopa County Health Services. Sylvia, who is fluent in Spanish and French (and has a B.A. from ASU in French), spent three months in Thailand as an exchange student in 1983.

Katherine Burkett joined our staff as a Process Server on May 13th. A graduate in Justice Studies from ASU, Katherine previously worked at the Maricopa County Juvenile Court.

Three law clerks begin their work at our office on May 28th:

David Anderson, who just received his law degree from ASU, will join Trial Group C. Last fall he did an externship in the appeals bureau of the City of Phoenix Prosecutor's Office. David is fluent in Spanish.

Reginald Cooke will work in Trial Group D. Reginald also received his law degree from ASU and will be familiar to some of our staff since he served as a legal extern in our juvenile division during the spring semester.

Constantino (Tino) Flores was awarded his law degree from the University of Oregon. Tino, who is fluent in Spanish, has done volunteer work at the Legal Aid Service in Oregon. Tino's background also includes four years of service in the Marine Corps.

Four new Client Services Coordinators are starting on May 28th:

Marguerite Breidenbach, an ASU graduate with a B.S. in Psychology and a Master's degree in Education, comes to our office from the Maricopa County Adult Probation Department where she served as an IPS (Intensive Probation Services) team member.

Pamela Davis, an ASU graduate with a B.S. in Criminal Justice, previously was employed at the Maricopa County Adult Probation Department as a surveillance officer for the IPS program. Pamela also has worked in time computation for the Arizona Department of Corrections.

Kevin Pollins, a graduate of Springfield College (Massachusetts) with a B.S. in Sociology, has extensive experience in New York's juvenile and human resources agencies. Most recently, Kevin was employed as a case manager at the Victory House Discovery Center for juveniles in Mesa.

Peggy Simpson, a Justice Studies major from ASU, also worked for the Maricopa County Adult Probation Department as a probation officer and had previous experience as a Correctional Services Officer at Perryville. Prior to coming to Arizona, Peggy worked as a counselor and "detox technician" in Oregon at the Baker County Council on Alcohol/Drug Problems.

On May 28th, three new secretaries are starting employment here:

Teresa Carranza joins our office after two years of employment with Security Pacific Bank. Teresa will be part of Trial Group B.

Beatriz Martinez comes to our appeals division after working as a Program Secretary at Camelback Hospital's Phoenix Shoplifting Diversion Program. Beatriz is fluent in Spanish.

Helga Mehlau transfers to the Public Defender's Office appeals division from Maricopa County Department of Health Services where she was employed as an administrative secretary. Her prior county experience also includes working at the Office of Management Analysis, the Sheriff's Office, and Warrants and Fugitives Office.

Also on May 28th, Sherri McGuire, Andrea Kever and Robert Corbitt will begin duties as trial lawyers at our office. Sherri, Andrea and Robert previously served as law clerks. They were sworn in as attorneys on May 18th. Sherri, who was awarded her law degree from ASU, will be assigned to the Juvenile Division at SEF. Andrea, who was awarded her law degree from Valparaiso University will be assigned to Trial Group A after she completes training. Robert, who received his law degree from Brigham Young University, will be assigned to Trial Group C after training. ^